

225403



Surface Transportation Board
Docket No. MC-F-21034

Public Comment
by

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11 signed originals to the STB
1 to William D. Taylor
1 to James A. Calderwood

The Application and the Issue

Motor carrier (applicants) members of the Clean Truck Coalition, LLC, hereinafter referred to as “CTC” have applied for approval to participate in the “Pooling and division of transportation or earnings”¹ which must be approved by the Surface Transportation Board. Such approval would allow the CTC members to;

Pool:	Traffic, Services, Earnings
Divide:	Traffic, Services, Earnings.

The regs do NOT allow for the pooling or dividing of the motor vehicles. The use of motor vehicles is specified in detail in other sections of the code.

It is the main intent of the CTC to share vehicles as needed between legally separated motor carrier members. CTC members “will depend on each other to pool and/or divide specialized clean truck equipment....emphasis on exchanging vehicles...including a lease arrangement between them to distribute these specialized vehicles...”² and to “pool their clean trucks.”³ The leasing regulations prohibits such an arrangement as it would obscure responsibility for the vehicle and imperil the public safety. It is also the intent of the CTC to pool operating authorities.⁴ The CTC should consider their legal alternatives which are either to consolidate or form a brokerage. It would be in the public interest that CTC file for it’s own authority, either as a motor carrier, broker or freight forwarder.

There are other legal options for the sharing of motor vehicles. Common carriers may conditionally interchange motor vehicles without leasing them to one another.⁵ The leasing of motor vehicles between the motor carriers that the CTC is trying to accomplish is already addressed in specific detail in the leasing regs.⁶ It seems that the CTC is attempting to elude the leasing regs by creating an interchange agreement of motor vehicles with the Board’s blessing.

¹49 U.S.C. Sec. 14302

²Clean Truck Coalition, CTC Pooling Application filed June 3, 2009, page 11

³Ibid. page 8

⁴Ibid. page 10

⁵49 CFR sec. 376.2(c)

⁶49 CFR sec. 376.22

The Argument

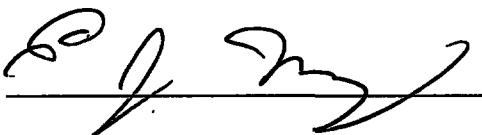
The application is an attempt to use the merits of the Clean Truck Program as the reason for the approval of the request. Every caution has been utilized **NOT** to mention existing regs pertinent to the intent of the application. The description of the industry and how the CTC will affect it has not been truthful nor accurate.

The Clean Truck Program (CTP) is a joint creation of the Ports of Los Angeles and Long Beach with the goal of cleaning up local air pollution by replacing older trucks with newer and less polluting vehicles. There are currently over 6,000 clean trucks registered with the CTP and another 1,000 to be funded in the next few months by California proposition IB funds and with federal stimulus money. By the end of this year only clean trucks will be allowed in the port. There are estimates that there will be 500 motor carriers with close to 8,000 clean trucks participating as concessionaires in the Port. The ports will reach their goal to cut down pollution without disrupting drayage by year's end. It is an excellent program that deserves all the gratitude in the world for having cleaned up the air. To even insinuate that the success of the Clean Truck Program is dependent upon or even affected by the approval of the application before the STB is an insult to those that developed and implemented the CTP.

It is the intent of the CTC to "lease" motor vehicles between them and lists 626 such vehicles in their fleets. Most of these trucks (if not all) are financed or leased from financial firms specializing in this industry and many are subsidized with public funds or financial incentives. The purchased trucks have lien holders which perfect their investment with proper title and filing. Those that are leased include both the motor carrier and the lessor on title as required by law. Both the leases and finance agreements prohibit the sub-leasing of the vehicles to others. I would challenge a showing of proof by the CTC to show otherwise. The request for permission to lease equipment between members of the CTC is a financially and legally moot request before the STB. Even if the CTC members had clear title and the legal ability to lease vehicles to one another it would not be functional. The nature of the local drayage industry is composed of many local and short moves with dray trucks averaging 2-3 rounds a day into the terminals. The intent of the CTC is to interchange the trucks in a pool and will be utilized on an as needed basis, possibly on a single drayage utilization of the vehicle. This would constitute a "rental" and not a LEASE under California law and would be in violation of the federal leasing regulations which are meant to protect the public. **It is not in the public interest that this application be approved.**

The CTC will be able to control and manipulate the local drayage industry. Approximately 500 companies will remain at the end of this year with approximately 8,000 clean trucks allowed to enter the port. This averages out to 16 trucks per motor carrier. The 10 member applicants have an average of 62 trucks each ranking them as larger companies. If the application is approved the CTC will have a combined 626 trucks which **will restrain the competition** which only averages 16 trucks per motor carrier.

I ask that the application be denied in that it does not serve the public, it will restrain competition and is contrary to existing law. If it cannot be denied it should at least go to a full hearing.



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Leasing Requirements Cites and Authorities

At the core of our transportation system is the accountability for the vehicles being used, both owned and leased. The issue of responsibility for non-owned equipment was addressed in P.L. 104-88 in Sec. 14102 which requires that the motor carrier "have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier."¹ This is the basis for the leasing regs which require that "The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease."² The regs are very clear and adamant in that not only are the provisions to be included in writing in a lease contract but are to be adhered to and performed.³ The Public Law requires that the leases comply with the leasing requirements of the state of residency, "with other applicable law..."⁴ The "Requirements for Perfection of Security Interest"⁵ requires the correct registration of owned and leased vehicles in the base state. Motor carriers (lessee) must identify themselves on the registration if the base state facilitates such notification. If not, it must file a notice of lease or lien as provided by the state commercial code.

California defines a lease as a "transfer of the right to possession and use of goods for a term in return for consideration..."⁶ The vehicle code then establishes the required duration of a lease of a vehicle as "a term exceeding four months."⁷ To distinguish between a lease and rental the DMV considers any less of a duration a rental.⁸ All leased vehicles must be correctly registered with the department⁹ listing both the lessor and lessee on the registration.¹⁰

¹ P.L. 104-88; Sec. 14102. Leased motor vehicles [Page 109 stat.891]

²49 CFR Sec. 376.12(c)

³49 CFR Sec. 376.12

⁴P.L. 104-88; Sec. 14102(a)4. Leased motor vehicles

⁵49 U.S.C. Sec. 14301(b)

⁶Uniform Commercial Code 10103(a)10

⁷CA Vehicle Code sec. 371-372

⁸CA Vehicle Code sec. 508

⁹CA Vehicle Code sec. 2989.4(a)1

¹⁰CA Vehicle Code sec. 4453.5